DO YOU KNOW ABOUT THIS?

There has been a change in the procedure regarding amendments.

Please see attached.

UNITED STATES BANKRUPTCY COURT

Western District of New York

Paul R. Warren
Clerk of Court

INFORMATION REGARDING AMENDMENTS/DELAYED INITIAL FILING OF SCHEDULES, LISTS, STATEMENTS, ETC.

Under Bankruptcy Rule 1009 Fed. R. Bankr. P., a voluntary debtor may amend his/her/its petition, schedules, statements, lists, etc. "as a matter of course at any time before the case is closed." Under Rule 1008 Fed.R.Bankr.P., such amendments must contain the verified signature of the debtor or the debtor's unsworn declaration under penalty of perjury. (Signatures of both debtors are required in a joint case.)

It was the practice of this Court to require a motion or ex parte motion to amend. This was to accord with prior versions of the applicable Fed.R.Bankr.P. since 1973, it was the view of the Court that under normal circumstances, no motion to amend could be denied. Rather, the motion or ex parte motion format was thought to be a convenient format for bringing an amendment to the Judge's attention in a uniform, controlled manner.

Orders entered on such motions have never constituted a declaration of the Court regarding the effect of the amendment on parties or the sufficiency of the amendment in altering the rights of parties adverse to the debtor. For example, the fact that the Court granted an order adding a creditor after the deadline for the filing of objections to discharge was merely a recognition of the language of the Rule, and in no way impaired the fact that under 11 USC Section 523 (a) (3) many such late-added debts are not dischargeable in the bankruptcy case.

Over time, information reaches the Court that (1) this District was one of very few Districts, if not the only District, entering orders or amendments, (2) that no motion format was unduly cumbersome and expensive as to the vast majority of amendments, which are amendments that do adversely affect other parties, the entry of orders thereon grossly mislead the adverse parties by implying that the Court had considered the merits of the amendment and had resolved any potentially-implicated questions of law in the debtor's favor.

The cumulative effect of these considerations led the Court to adopt the Local Rules of Bankruptcy Procedure, abolishing the entry of orders on amendments in the absence of genuine disputes regarding their sufficiency or effect.

Pursuant to the Local Rules of Bankruptcy Procedure, I have prescribed the attached form of Amendment/Schedule Cover Sheet. This must be completed fully and attached **TO THE FRONT** of anything that the debtor wishes to have recognized as an "amendment." The significance of this requirement cannot be overstated. It means, for example, that if the debtor must amend schedules to disclose the existence of property not previously scheduled, so that the debtor can avoid later **CRIMINAL PROSECUTION** for concealment of property, no certification will be available **FROM THE CLERK** that the debtor filed an amendment disclosing the property unless a fully completed Amendment/Schedule Cover Sheet was affixed to the top of the purported amendment, so that my office could recognize it as such. (Whether the cover sheet is attached or not, it is ultimately a matter of **JUDICIAL** interpretation as to whether what was filed was legally sufficient in light of, for example, the verified signature requirement of Rule 1008 Fed.R.Bankr.P.)

The next important point of information is that the General Order **APPLIES EVEN TO A SPECIAL CATEGORY OF MATTERS THAT ARE NOT TRULY "AMENDMENTS."** This situation is one in which the debtor has filed one or more, but not all, of the required schedules, lists or statements, and later files the previously -missing ones

disclosing thereon the existence of parties not disclosed in the earlier documents. In the performance of its duties under law, the Clerk's Office is required to maintain a current listing of all parties-in-interest disclosed by the debtor or self-announced by the party. Previously, this has required a member of the Clerk's staff to examine every line of every amendment and every line of every schedule, statement, list etc. that is filed subsequent to the filing of the original "Complete List of Creditors" or Matrix, comparing names of parties with the original in order to locate parties being added. Such additions have been a very common occurrence. In reality, the situation is more accurately viewed as one in which the debtor **SHOULD BE FILING AN AMENDMENT TO THE ORIGINAL, BUT IS NOT DOING SO,** thereby, placing an immense burden on the Clerk's Office, at taxpayers' expense, to make certain that persons entitled to notice of the proceedings in fact receive it.

Pursuant to the Local Rules, such situations **ALSO REQUIRE THE USE OF THE AMENDMENT/SCHEDULE COVER SHEET,** so that my office may readily observe the fact of the addition of parties, and their identity. If this requirement is not met, the Local Rules relieve the Clerk of the responsibility to add the new parties to the master mailing list. The consequence of the fact that such parties might not receive notice of various events in the case will fall squarely on the debtor; such consequences might include the exception of pertinent debts from the scope of the discharge, denial of confirmation of plan, etc.

Finally, there is the matter of the "form" of the documents submitted as purported amendments , apart from the matter of the Cover Sheet. As indicated above, Rule 1008 Fed.R.Bankr.P. contains a signature requirement; beyond that, Rule 1009 Fed.R.Bankr.P. contains a service requirement. That is the total of the guidance provided by the Federal Rules of Bankruptcy Procedure. The elimination of the motion format provides much greater flexibility and economy in this regard. Debtors may use virtually any written method of communicating the amendment, so long as it is clear. For example, if the debtor is amending the Schedule of Creditors to change the amounts owed, it might well suffice to file (with the Cover Sheet) a photocopy of the original page, with the changes noted in a different color ink, mark it "Amended," and attach the verified signature of the debtor. In other instances, clarity might require some form of narrative statement, such as "The debtor hereby amends the description of the real estate described in Schedule B-1 to read as follows:....."

In any event, the elimination of the motion format eliminates the need for the Clerk's Office to "police" the form of amendment, while the Cover Sheet requirement assures that the lack of a standard format does not result in my failure to recognize the nature of a document as a purported "amendment." Therefore, the Clerk's Office will not look beyond the Cover Sheet, and will not assess the sufficiency of the amendment, except as to the very few types of amendments that directly affect the ability of the Clerk's Office to perform its own work. (An example of the responsibility of the Clerk to maintain the court records under the correct case name, and the Clerk will not honor an intended caption amendment which lacks the verified signature of the debtor, or which attempts to add another debtor to the caption, etc.)

While most people will welcome this fact, there is a consequent drawback; parties will no longer have the assurance that filing and processing of an intended "amendment" by the Clerk constitutes an administrative finding of regularity and sufficiency to serve the intended purpose. Attorneys who file purported "amendments" signed only by themselves, and not by their clients, will generally not be informed that the effort to amend is ineffective under the Federal Rules of Bankruptcy Procedure. A party aggrieved by the effort, and better enlightened as to the Federal Rules of Bankruptcy Procedure, will be free to challenge it in any suitable manner.

Indeed it is one principal purpose of the Local Rules of Bankruptcy Procedure that the time of the Courts and its staff no longer be spent engaging in judicial or administrative findings as to amendments that do not affect the work of the Court, and as to which no party has expressed any adverse interest.

As has always been the case, it remains the responsibility of the debtor to serve the amendment on affected parties under Rule 1009 Fed.R.Bankr.P., and also on the United States Trustee and any trustee who is serving in the case. It also remains true that copies of amendments must be filed in the same number as was required of the original documents.

(6/99)